

Amendment
Serial No. 10/825,819

REMARKS

Claims 1-18 are pending in the application. Claims 1 and 10 are independent claims.

At the outset, Applicant notes with appreciation the indication in the Office Action that claims 2-9 and 11-18 recite allowable subject matter.

Claims 12 and 13 have been amended in accordance with the Examiner's suggestion, thus overcoming all objections thereto.

Claims 1 and 10 stand rejected under 35 U.S.C. §103(a) over Prior Art Fig. 1 in view of Hirano *et al.* (U.S. Pat. Pub. 2006/067691) ("Hirano"). Applicant respectfully traverses this ground of rejection for the reasons indicated herein below.

In order for a claim to be rejected as obvious under section 103, there is required to be a showing that the prior art references, alone or in combination, teach all the features in the claims (*In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)), including those in functional language (*In re Schreiber*, 128 F.3d at 1478), and/or those features as combined in the claims would have been within the ordinary skill in the art (*KSR International Co. v. Teleflex Inc. et al.*, No. 04-1350, U.S. Supreme Court, decided April 30, 2007). Without such a showing, then a *prima facie* case of obviousness has not been set forth. According to the United States Court of Appeals for the Federal Circuit, a rejection of a claim under section 103 of 35 U.S.C. must be supported by a showing of unrebuttable prima facie case of obviousness (*In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453 (Fed. Cir. 1998)).

Regarding the rejections of claims 1 and 10, it is admitted in the Office Action at page 4 that Prior Art Fig.1 fails to teach that the ONU switches a second predetermined number of broadcast signals from the first predetermined number of broadcast signals according to each

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subscriber interface unit (SIU) by channel selection information contained in an upstream Ethernet information. In other words, in Fig. 1 all the broadcast signals received by the OLT are converted and forwarded to the ONT. However, Hirano allegedly discloses what is missing in Fig. 1, and it is alleged that the combination of Fig. 1 and Hirano would have made claims 1 and 10 obvious to a person of ordinary skill in the art at the time of invention.

In response, Applicant respectfully submits that the combination of the prior art of Fig. 1 and Hirano fails to render either of claims 1 or 10 as being obvious to a person of ordinary skill in the art. Applicant has reviewed Hirano and finds that this reference only makes at best a minor reference to filter 23 (shown in FIG. 1 of Hirano) being able to filter messages to a plurality of subscribers. Hirano discloses that the filter 23 can be used to direct unicast, multicast or broadcast signals to the subscribers, but there is no disclosure regarding the broadcast signals being sent are those selected by the SIU (subscriber) via an upstream message. Hirano is completely silent about the user selection sending an upstream Ethernet channel selection to an ONU, and the ONU in turn sending only the selected broadcast signal so that all the broadcast signals received from the OLT are not sent to the subscribers, but rather only the selected broadcast signals, achieving a significant savings in bandwidth.

Furthermore, the combination of Prior Art Fig. 1 and Hirano fails as a combination to disclose or suggest claims 1 or 10 as Hirano defines the term broadcast at paragraph [0044] (page 3) as **"broadcast is defined as delivery of the packets to all the terminals** belonging to the concerned broadband group if the terminals 4-1 to 4-n are divided into some broadband groups" (emphasis added in boldface and underlining). In Prior Art Fig.1, all the broadcast channels received by the OLT are sent to the ONT. Similarly, Hirano discloses that a plurality of the broadcast signals are sent to all the terminals in a particular group, and thus the combination does

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not disclose or suggest the claimed invention. As Hirano fails to disclose what is missing in Prior Art FIG. 1, the combination of FIG. 1 and Hirano fails as a combination to disclose or suggest switching the broadcast signals to the SIU that have been selected via an upstream Ethernet message.

Accordingly, the combination of Prior Art Fig. 1 and Hirano fails to disclose or suggest at least that the ONU is "switching a predetermined number of broadcast signals from the first predetermined number of broadcast signals according to each subscriber interface unit (SIU) by a channel selection information contained in upstream Ethernet information" as recited in claim 1 (claim 10 having a similar recitation).

For all of the above reasons, Applicant respectfully submits that none of the present claims would have been obvious to a person of ordinary skill in the art in view of the Prior Art of Fig. and Hirano.

Reconsideration and withdrawal of all grounds of rejection under 35 U.S.C. §103(a) are respectfully requested.

To reject a claim under section 103, the United States Court of Appeals for the Federal Circuit required a showing of an unrebutted prima facie case of obviousness (*In re Rouffet*, 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998)). According to the section 2143.03 of the Manual for Patent Examiner Procedure (the "MPEP"), the *prima facie* case cannot be established unless the references cited by the Patent Office, alone or in combination, teach all features recited in the claim (see also *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1970)).

Applicant respectfully submits that for the aforementioned reasons, the USPTO has not met the burden of showing a proper *prima facie* case of obviousness for any of the claims. Reconsideration and allowance of all the pending claims are respectfully requested.

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Should the Examiner deem that there are any issues which may be best resolved by telephone, please contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,

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